



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

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December 19, 2018

The Honorable Brian Schatz
United States Senate
Washington, DC 20510

Dear Senator Schatz:

Thank you for your letter regarding the confidentiality of information collected through the decennial census. I appreciate your perspective on U.S. Census Bureau issues and the time you have taken to share your concerns. As you know, ensuring a complete, accurate, and fully funded decennial census is one of my most important duties and goals.

I have had no discussions with any Federal official or entity regarding abrogating the Census Bureau's longstanding Title XIII confidentiality obligations. As I indicated in my remarks at the U.S. Census National Partnerships Press Event on October 2, 2018:

[B]y law — the Census is strictly confidential. Responses are not shared with anyone outside of the Census Bureau. Since 1954, Census workers have sworn for life to uphold confidentiality protections contained in the Title 13 legal statute. It is against the law for any Census Bureau employee to share respondent information with anyone. That means they cannot share Census data with any other government agency or government officials, including those working at the IRS, the FBI, ICE, DHS, and for local and state law enforcement agencies.¹

This is the position of the Department and the Census Bureau, and I share it. Sections 8 and 9 of Title 13 ("Title XIII") govern the protection of statistical data used in the development of the census and all Census Bureau data collection activities. Section 8 specifies when and how certain Census information may be publicly released. Section 8(a) allows the release of respondents' answers to Census or survey questions to those respondents only upon their written request. Under 13 U.S.C. § 8(b), only tabulations and other statistical materials "which do not disclose the information reported by, or on behalf of, any particular respondent" are releasable. Moreover, any information provided under 13 U.S.C. § 8 is privileged against being "used to the detriment of any respondent or other person to whom such information relates, except in the prosecution of violations of [Title 13]." *Id.* at § 8(c).²

¹Wilbur Ross, Secretary, U.S. Department of Commerce, remarks at the U.S. Census National Partnership Press Event (Oct. 2, 2018), available at <https://www.commerce.gov/news/secretary-speeches/2018/10/remarks-secretary-wilbur-l-ross-us-census-national-partnership-press>.

²Violations of the Census Act include refusing to answer a mandatory census or survey of the Census Bureau, refusing to assist in the conduct of such a census or survey, or providing the Census Bureau with false information. 13 U.S.C. §§ 221-224. The assault, murder, or attempted murder of a Census Bureau employee engaged in official field duties also is

Section 9(a) of the Census Act contains additional specific nondisclosure limitations that govern confidential census information. Under 13 U.S.C. § 9(a), no officer or employee of the Department of Commerce may:

(1) use the information furnished under the provisions of [Title 13] for any purpose other than the statistical purposes for which it is supplied; (2) make any publication whereby the data furnished by any particular establishment or individual under [Title 13] can be identified; or (3) permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.

Title XIII precludes those within the Department and the Census Bureau who have sworn to protect this sensitive information from making “*any* publication whereby the data furnished . . . can be identified.” (emphasis added). In *Baldrige v. Shapiro*, the Supreme Court interpreted the language of Section 9 literally, emphasizing that the language places confidentiality protections on the data itself. 455 U.S. 345, 356 (1982) (observing that “the language of each section refers to protection of the ‘information’ or ‘data’ compiled . . . By protecting data revealed on behalf of a respondent, Congress further emphasized that the data itself was to be protected from disclosure. The legislative history also makes clear that Congress was concerned not solely with protecting the identity of individuals”). The Office of Legal Counsel opinion you referenced affirms this analysis, and the Department and the Census Bureau will continue to do whatever is necessary to uphold this duty of confidentiality, unless and until Congress alters its obligations under the law.

Unless and until it does so, we will uphold the law as discussed above. Census employees and all Commerce employees with potential access to raw Census data, including Deputy Secretary Kelley and I, are bound by an oath of confidentiality. We take this oath and our obligations under Title 13 seriously.

Thank you for your inquiry, and I look forward to continuing to work with the Census Bureau and the Members of Congress to ensure a complete and accurate 2020 Decennial Census.

If you have further concerns or questions, please have your staff contact Michael Platt, Jr., Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,


Wilbur Ross

a federal crime. 18 U.S.C. §§ 1114; *see also* 28 C.F.R. 64.2(l) (listing Census Bureau enumerators as protected Federal employees).